

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA**

In the Matter of:

JHERAN D.,

Claimant,

vs.

SOUTH CENTRAL LOS ANGELES
REGIONAL CENTER,

Service Agency.

OAH No. L 2007020190

DECISION

This matter was heard by Mark E. Harman, Administrative Law Judge of the Office of Administrative Hearings, in Los Angeles, California, on March 23, 2007.

Michael W. Monk, Musick, Peeler & Garrett LLP, represented South Central Los Angeles Regional Center (Service Agency). Jheran D. (Claimant), who was present for the beginning of the administrative hearing, was represented by Betty C., Claimant's mother.

The parties presented oral and documentary evidence. The record was closed, and the matter was submitted for decision on March 23, 2007.

ISSUE

Should respite services be increased from 24 hours to 50 hours per month?

FACTUAL FINDINGS

1. Claimant is a consumer receiving services from the Service Agency under the Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare and Institutions Code¹ section 4500 et seq. Claimant is 13 years old and has been diagnosed

¹ All statutory references are to the Welfare and Institutions Code, unless specified otherwise.

with Down syndrome, moderate to severe mental retardation, autism, and a seizure disorder. Claimant lives with his 55-year-old mother, who is separated from his father. His father has a lengthy medical history (diabetes, cancer, stroke) and is not involved actively with Claimant's care at this time. (Exhibit 1.) His mother has requested an increase of respite services, from 24 hours to 50 hours per month.

2. Claimant's mother is his sole provider. She is employed full-time by the Los Angeles Unified School District as a special education classroom aide for a girl with William's disorder. This job leaves the mother tired and stressed at the end of the day, when she comes home to care for Claimant, and she has little support. She has been receiving 24 hours per month of respite since January 2005, but she still feels overwhelmed and "desperately in need of some leisure time for myself." (Exhibit 9.)

3a. The Service Agency authorized an increase in respite services from 16 to 24 hours per month in December 2004, to give claimant's mother some time off for herself. (Exhibit 3.) The Service Agency was also funding two hours of gymnastics per week at that time. Claimant was in stable health, was taking seizure medication, his mother was administering enemas every other day and Miralax on the weekends for his bowel dysfunction, and he was taking a nasal decongestant. Some self-injurious behaviors were displayed approximately once a month. He was having a temper tantrum approximately once a month, and his mother was very patient with him. Claimant typically resorted to verbal abuse or threats, but had not caused physical injury, and there were no unacceptable behaviors that interfered with social participation at his school. (Exhibit 5.)

3b. In January 2005, Claimant's father was still a part of his life, making sure that he was on the school bus every morning. There was no report of Claimant's mother having any health problems at that time other than stress related.

4a. At present, Claimant is non-verbal. He engages in self-injurious behaviors daily, such as banging his head on the wall and socking himself in the nose. He spits and kicks when he is upset. Recently, his sleep pattern has become irregular and he often stays up all night, which also keeps his mother up, leaving her exhausted and unable to cope. He has no sense of danger. He wanders away daily, and must be supervised at all times. He recently bit a student during school hours.

4b. Claimant has no normal bowel or bladder control. He smears feces on his face and on the bathroom walls at every opportunity unless he is prevented. Claimant's gastroenterologist has prescribed treatment that includes daily laxatives and enemas to manage his bowel dysfunction, which Claimant's mother must administer. She performs the enemas only every other night, however, because "it is better for him to learn how to use his muscles," and she stopped giving him Miralax because the school complained too often.

4c. Claimant has approximately two doctor's appointments every month, which his mother must take him to, including visits to a cardiologist, gastroenterologist, otolaryngologist, pediatrician, and foot surgeon. One surgery took place in December 2006; another is scheduled for this summer. The Service Agency has not conducted either nursing or behavior assessments. Claimant's mother recently declined the Service Agency's request for a nursing assessment because she does not trust the Service Agency. She said the nurse "has got a narrow focus."

5. Claimant's mother also is dealing with personal medical issues. She was evaluated on November 30, 2006, by Dennis Ainbinder, M.D., an orthopedist acting in the capacity of an Agreed Medical Examiner, for reported intermittent to moderate back pain ("sometimes I can not get up [from the bed]"), and numbness in her right hand. Dr. Ainbinder diagnosed:

1. Lumbar myofascial sprain with degenerative disc disease
Lumber spine with MRI evidence of disc protrusion L3-L4,
X-ray and MRI evidence for spondylolisthesis L3-L4.
847.2 722.52 722.10 738.4
2. Probable carpal tunnel syndrome right wrist. 354.0

Claimant's mother's duties at her job were modified earlier to restrict heavy lifting. She hopes to schedule wrist surgery for herself in the future. (Exhibit A.)

6a. After receiving Claimant's mother's service request for increased respite hours in December 2006, Salem Strader (Strader), the Service Agency Service Coordinator handling Claimant's case, completed a respite authorization worksheet. This worksheet, which was approved by the Service Agency's board of administration, and has been used by the Service Agency for approximately five years, creates a quick assessment tool of factors in five domains: Claimant's medical needs; Claimant's behavior; Claimant's self-care; the caregiver's medical or other needs; and the level of family stress that affects the Claimant and caregiver. (Exhibit 11.) This tool rates the factors in each domain, such as whether Claimant's needs are intermittent or continuous, whether Claimant is classified as medically stable or fragile, or whether behavior concerns are severe or mild. The assessment tool categorizes the factors into a grid composed five levels of service needs (Levels A through E) across the five domains. The five levels of respite needs are as follows:

- Level A: Up to 16 hours per month
- Level B: Up to 24 hours per month
- Level C: Up to 32 hours per month
- Level D: Up to 40 hours per month
- Level E: Over 40 hours per month

6b. For example, a consumer seeking Level E respite based on a factor in the medical domain, must demonstrate the consumer had particular medical fragility requiring care on an hourly basis. If the consumer establishes these factors in only one or two domains, however, this is still not sufficient to qualify for Level E respite services. The Service Agency requires that the consumer demonstrate factors across at least three domains to qualify for the particular level of respite services. For example, a consumer who had ongoing challenging behaviors that required frequent treatment and who was unable to attend to most self-care needs, which are both factors falling within the Level C range of respite needs, but who was not medically fragile, or was not at risk of being abused by his or her family, or whose caregiver was not suffering from a physical or medical condition requiring frequent treatment, under the rules of the grid, this consumer would “qualify” only for Level B services, but not Level C.

7. In conducting the assessment, Strader reviewed reports and other documentation in Claimant’s case file, and she had a conversation with Claimant’s mother. Strader used the gathered information to determine that Claimant was not qualified for an increase in respite hours. Strader testified at the administrative hearing that Claimant might be able to demonstrate a Level C factor in the behavior domain, but Strader nonetheless had entered on the worksheet only Level B factors, as follows:

LEVEL B

Medical	Intermittent physical or medical needs (special care on a weekly basis)
Behavior	Demonstrating intermittent challenging behaviors beyond age-expectations (aggression, self-abuse, etc.)
Self-Care	Requires prompting or assistance in two or more areas
Caregiver Condition	Single parent [Strader did not find a qualifying medical condition because Claimant’s mother had failed to provide a doctor’s note regarding her bad back and wrist]
Family Stress	Family disruption due to consumer’s disability

(Exhibit 11.)

8. Even if the worksheet completed by Strader accurately reflects the information she had at that time, the worksheet itself does not consider every possible factor, and it should not be characterized as more than a guideline or assessment tool that does not require strict application in all situations. Nevertheless, Claimant demonstrated the presence of factors sufficient to establish his mother’s respite needs to be least at Level C, as follows. Claimant’s medical needs are more than intermittent. His mother must administer an enema every other day to manage his condition. Claimant’s challenging behaviors, self-abuse, and aggressive and inappropriate behaviors, are a daily occurrence. Claimant has physical or medical conditions requiring frequent treatment, and is unable to complete any hygiene tasks by himself. He is scheduled for one or two medical appointments every month, he is suffering from insomnia which keeps his

mother from sleeping at night, he suffers from nasal congestion which requires constant attention, and his bowel dysfunction requires continuous management. Claimant's mother has a physical or medical condition, her back and wrist pain, which is chronic and requires frequent treatment. She is a single parent with little family support to meet Claimant's needs.

LEGAL CONCLUSIONS

1. Under the Lanterman Act, the State of California accepts responsibility for persons with developmental disabilities (§ 4501) and pays for the majority of their "treatment and habilitation services and supports" in order to enable such persons to live in the least restrictive environment possible (§ 4502, subd. (a)).

2. Section 4690.2, subdivision (a), defines in-home respite services as "intermittent or regularly scheduled temporary nonmedical care and supervision provided in the client's own home, . . . designed to do all of the following:

- (1) Assist family members in maintaining the client at home.
- (2) Provide appropriate care and supervision to ensure the client's safety in the absence of family members.
- (3) Relieve family members from the constantly demanding responsibility of caring for the client.
- (4) Attend to the client's basic self-help needs and other activities of daily living including interaction, socialization, and continuation of usual daily routines which would ordinarily be performed by the family members.

See also, California Code of Regulations, title 17, section 54302(a)(34).

3. Claimant's mother is overwhelmed by the demands of working full-time and caring for her severely delayed son. She has little, if any, time for her needs. Her medical condition has worsened, and recently she has been staying up all night with her son when he can not sleep. The mother needs additional respite services in order to regain her physical and emotional stability.² Claimant is entitled to Level C respite.³

² Claimant's mother described a prior incident in which a care provider assaulted Claimant, which left her very distrustful of anyone caring for her son. At present, she is very satisfied with Angelique, the caregiver who is providing her respite on the weekends. She is anxious that Angelique will not continue providing respite services, because she is scheduled only a few hours each week, the compensation is inadequate, and Claimant's care can be challenging. These facts are not considered as the basis for this decision.

ORDER

Claimants' appeal of the Service Agency's decision is granted, as modified herein. The Service Agency shall fund respite services in the amount of 32 hours per month.

Dated: _____

MARK E. HARMAN
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter and both parties are bound by this Decision. Either party may appeal this Decision to a court of competent jurisdiction within 90 days.

³ A side issue arose during the hearing whereby the Service Agency stated that Claimant's age and level of development suggested the need to begin planning what is described as transition services for Claimant. A psychological evaluation or behavior assessment could be part of this planning. Claimant's mother and the Service Agency are strongly encouraged to work together to ensure that all appropriate planning and services are provided.